Arch Sex Behav (2010) 39:153–160
DOI 10.1007/s10508-008-9447-5

ORIGINAL PAPER

Transsexual Legal Rights in the United States and United Kingdom: Employment, Medical Treatment, and Civil Status

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Received: 5 February 2008 / Revised: 6 May 2008 / Accepted: 25 July 2008 / Published online: 11 December 2008
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Abstract Whereas hormonal and surgical sex change have been increasingly refined and accepted medically during the past 40 years, legal protections have only recently received attention. This overview focuses on employment, medical treatment, and civil status as male or female in the United States and the United Kingdom. Employment protection in the UK is assured since a court decision in 1994, but in the U.S. is generally uncertain and inconsistent between states. Health care, including surgery, under the UK National Health Service, is assured since a court decision in 1996. In the U.S., the absence of a national insurance program and the reluctance of private insurers to fund treatment remains an obstacle. Military personnel and prisoners are provided treatment in the UK but there is no military-provided treatment in the U.S. and prison treatment is limited. Change in birth certificate sex status is available in the UK since 2004. This permits heterosexual marriage as a person of the reassigned sex. In the U.S., whereas nearly all states permit birth certificate modification, obstacles remain to recognition across state jurisdictions. Some states forbid marriage for a transsexual as a person of their reassigned sex. This can impact on transsexuals as parents.

Keywords Gender identity disorder · Transsexualism · Legal rights

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Introduction

In 1968, the writer endorsed sex reassignment surgery for a male-born patient at the University of California, Los Angeles Medical Center. Previously, no patient there had undergone sex change. Concern was expressed over possible prosecution for mayhem. This is a statute deriving from medieval English law to prevent deliberate maiming of a soldier of the King to render him less fit for combat. The University counsel confirmed that the surgeon and I could be prosecuted for mayhem and could face 14 years in prison. Reassuringly, he advised that the University would pay our legal defense costs. The surgery went ahead. There was no prosecution.

Over the past four decades, as more physicians and medical centers followed, progress was made in refining endocrine and surgical treatments. But the law did not keep pace. Transsexuals are a small sex and gender minority. Their treatment is radical. Whereas prevalence rates for male homosexual persons are 4–5% for males and 2–3% for females (Sell, Wells, & Wypij, 1995), for transsexual persons it is estimated at 1 in 12,000 males and 1 in 30,000 females (Van Kesteren, Gooren, & Megans, 1996). This is not a large political constituency; support was not readily forthcoming. But, with increasing numbers of persons with gender dysphoria receiving medical assistance, society and its legal framework had to play "catch up." Political action groups, such as Press For Change in the UK and the International Foundation for Gender Education in the U.S., spearheaded awareness and action on behalf of the transgendered.

The following legal survey focuses on the United Kingdom and the United States. The writer has lived in both countries and has been a law school faculty member in both. The subject focus will be three areas of especial salience to the transgendered: employment protection, medical treatment, and change in civil status as male or female with

implications in family law. Legal coverage and analysis is not meant to be exhaustive but is presented as an overview for sex researchers and clinicians.

Civilian Employment

The trial period of cross-gender living for the gender dysphoric person prior to irreversible surgery (the Real Life Experience) often requires employment in the intended gender role. This is to demonstrate social effectiveness. Post-operative transsexuals need to maintain or obtain employment as would any non-transsexual. Until relatively recently, transgendered employees received little legal protection.

The United Kingdom

The leap forward in UK law against employment discrimination for the transgendered was in 1994. An employer issued a three month dismissal notice when the employee was pre-operative which took effect after sex reassignment was complete. The UK invoked its Sex Discrimination Act 1975 before the European Court of Justice and argued that the transsexual was treated fairly under sex equality law. This because the male-to-female transsexual would have been dismissed for undergoing sex reassignment whether she had been a man or a woman. To the Court, the UK comparator (the "equality of misery" rule) was ludicrous. It wrote: "…where a person is dismissed (from employment) on the ground that he or she intends to undergo or has undergone gender reassignment, he or she is treated unfavourably by comparison with persons of the sex to which he or she was deemed to belong before undergoing gender reassignment." This discrimination was contrary to the 1976 Equal Treatment Directive (P v S and Cornwall County Council, 1994).

In response to this ruling, the Sex Discrimination Act 1975 was amended. It now included discrimination against an individual in employment who is treated less favourably on the grounds of intending to undergo or is undergoing or has undergone gender reassignment.

The United States

In an early employment case in 1974 a male teacher of 10-year-olds took a medical leave and attempted to return as a woman teacher. The school refused, categorizing the teacher as "disabled" because of an expected negative impact on students. The court upheld the school position (In re Grossman, 1974).

Title VII is the U.S. federal anti-sex discrimination statute. Its legislative history with discussion of its intended scope is scant as it was tacked on to an anti-racial discrimination bill a day before the vote to defeat the latter. The bill passed.

In 1977, the Ninth Circuit Court of Appeals held that a transsexual dismissed from employment was not terminated "because she is male or female, but rather she is a transsexual who chose to change her sex" (Holloway v Arthur Andersen and Co., 1977). Six years later, the writer was an expert witness for Karen Ulane against Eastern Airlines in a Title VII case that was initially very promising. Ulane had flown as a pilot for Eastern for 10 years as a male with an excellent record. Ulane took a medical leave for sex reassignment. She had a birth certificate change to female and was certified to fly as a female by a federal agency. But Eastern refused to employ her as a woman pilot. She argued that since Eastern employed her to pilot as a man but not as a woman, this was sex discrimination. The trial judge agreed, holding that sex discrimination includes discrimination based on sexual identity (Ulane v Eastern Airlines, 1983).

The writer had testified to Ulane being a woman:

Question: What is Karen Ulane's gender?
Answer: Karen Ulane is a woman. (She) has a sexual identity as female and behaves socially and feels psychologically as a woman. She is legally…a female and, additionally, psychologically, a woman" (Ulane Transcript, 1983).

In a memorandum, the trial court added that Title VII should apply "with equal force whether (Ulane) be regarded as a transsexual or as a woman" (Ulane v Eastern Airlines, 1983). She was reinstated with back pay.

Eastern appealed. The court of appeals reversed. "Congress never intended…that (Title VII) apply to anything other than the traditional concept of sex". Disparagingly, it added, "Even if one believes that a woman can be so easily created from what remains of a man, that does not decide this case" (Ulane, 1984). To the court, the sex discrimination statute protected men and women, but not transsexual men and women. It took me 3 years in law school to finally fathom the legal distinction the court was making (Green, 1986).

This case remained "good law" (legally accepted) for two decades. The potential for change came in 1989 when the Supreme Court found discrimination based on sex stereotypes. A woman had been denied partnership in a major accounting firm because she was insufficiently feminine to conform to the employer's expectations of a "lady partner" (Price Waterhouse v Hopkins, 1989). This ruling opened the door of anti-sex discrimination law to transsexuals. They did not conform to sex stereotypes.

In 2003, a male-to-female transsexual psychiatrist brought suit against her former employer under Title VII. She was in gender transition but advised to avoid wearing overly feminine clothing. She was referred to with male pronouns. The trial court found that she was not claiming protection as a transsexual. Rather, she was claiming to have been discriminated against for failure to "act like a man." "Transsexuals

are not genderless, they are either male or female and thus protected under title VII to the extent that they are discriminated against on the basis of sex" (Centiola v Potter, 2003).

Two other successful Title VII cases followed. One involved a male fire fighter who had informed the employer that he was to pursue sex change and began to feminize in dress and appearance. He was declared "not masculine enough" and suspended for a minor infraction. The court found that as "identification as a transsexual is the statement or admission that one wishes to be the opposite sex… such an admission…itself violates the prevalent sex stereotype that a man should perceive himself as a man" (Smith v City of Salem, 2004). The other concerned a male policeman who cross-dressed off-duty, wore makeup to work, and had arched eyebrows and manicured fingernails. He had been dismissed for failure to meet the police on-duty grooming standards (Barnes v City of Cincinnati, 2005).

The United States has been moving slowly toward enacting local laws protecting against discrimination based on gender identity. The first was passed in 1975 in the city of Minneapolis. In 2002, New York City enacted protection. Currently, about one-third of the American population lives where transgendered persons are protected in employment, housing, and the use of public accommodation (Judiciary Committee, 2006).

However, at the national legislative level, protection on the basis of gender identity has met greater resistance. It was included in the 2007 proposed bill, the Employment Non-Discrimination Act. However, its sponsor withdrew gender identity to ensure passage protecting other employees on the basis of sexual orientation (Advocate.com 9/29/07–10/01/07).

Military Employment

The United States

The American military is unsympathetic to the transgendered. Pre-operative transsexuals cannot join if they divulge their gender dysphoria (Witten, 2007). If post-operative, they are barred from joining in consequence of having a "major genital abnormality and defect of the genitalia such as change of sex." Further, they are not considered psychologically or sociologically suited for military service, as they are deemed to require "continuing sophisticated medical care because of the absence of organs and glands normally present in an individual at birth" (Cleghorn, 2003).

The United Kingdom

The United Kingdom accommodates the transgendered. In 1999, guidelines by the Defence Ministry declared that military personnel who transition in gender and/or have sex-change surgery would be allowed to remain in service (BBC News, 1999; Guardian, 1999). A case that year concerned a male-born engineer who had served in combat zones. During the Real Life Experience as a woman she was given a desk job. After sex reassignment, although remaining in the military, she was restricted in promotions, as women were only permitted to serve in non-combat units (Davies & Jones, 1999). In 2000, a navigator with the Royal Air Force was grounded during the gender transition. Upon returning from surgery, she was returned to flight duty. Testing demonstrated that genital surgery had not affected job performance (Paterson, 2000).

Civil Status: Birth Certificate Change

The United Kingdom

The landmark UK decision regarding legal sex of post-operative transsexuals had been in 1970, the Corbett case (Corbett v Corbett, 1970). This concerned a challenge to the validity of a marriage by the man, alleging that his transsexual wife was still male. The court held that three criteria at birth determine legal sex: chromosomes, gonads, and genitalia. The marriage was void, being between two males.

Early cases, post-Corbett, challenging governmental refusal to change legal sex involved a male-to-female transsexual treated as male under the Sexual Offences Act, 1957 and male-to-female transsexuals considered male for the sex-different retirement and pension ages (National Insurance Commission Decisions, 1980; Regina v Tan and Others, 1983).

Over the decades, a series of cases was brought from the United Kingdom to the European Court of Human Rights. Sixteen years after Corbett, a postoperative female-to-male transsexual who had lived for 9 years as a man brought suit. Action was brought under Article 8 of the European Convention (Convention for the Protection of Human Rights and Fundamental Freedoms): "Everyone has the right to respect for his private life…" His medical expert argued that psychological sex should trump the three biological criteria. The government argued that the birth register is a record of fact at the time of birth. The court deferred to the UK by a vote of 12-3 as there was "little common ground" on the question between contracting states (Rees Case, 1986). However, the UK government was advised to keep the issue under review having regard to scientific and social change.

Fourteen years later, a similar case was brought by a male-to-female transsexual who was a prominent model. Again the court rejected the applicant's case. This time the vote was 12-8 (Cossey v UK, 1990). Seven years later, another case was brought under Article 8 and Article 12, the right to marry. The

UK position prevailed once more, by a vote of 11-9; however, the Court was losing patience: "…[t]he Court cannot but note that despite its statement in the Rees and Cossey cases on the importance of keeping the need for appropriate legal measures in this area under review, having regard in particular to scientific and societal developments, it would appear that the respondent state has not taken steps to do so" (Sheffield and Horsham v United Kingdom, 1998). At the time, 33 of 37 member states had made provision to alter birth certificates, leaving the UK in the company of Ireland, Andorra, and Albania.

Finally, in 2002, the Court lost patience. By the unanimous vote of 17 judges, it wrote: "…a test of congruent biological factors can no longer be decisive in denying legal recognition to the change of gender of a post-operative transsexual…where a State has authorized the treatment and surgery alleviating the condition it appears illogical to refuse to recognize the legal implications…In the twenty-first century the right of transsexuals to personal development and to physical and moral security in the full sense enjoyed by others in society cannot be regarded as a matter of controversy….No concrete or substantial hardship or detriment to the public interest has indeed been demonstrated as likely to flow from any change in the civil status of transsexuals" (Goodwin and I v United Kingdom, 1995).

Following this ruling, the UK implemented the Gender Recognition Act 2004. This permits change of sex on the birth certificate for a person living, apparently permanently, in the new gender. This can be implemented even when, for contravening medical reasons, surgical procedures were not performed. Persons with a birth certificate change can marry a person of the other sex in a heterosexual union. Transsexuals who are married must divorce prior to birth certificate change as the UK does not permit same-sex marriage. The couple may join in a civil union.

The United States

The United States has 50 state jurisdictions and the federal District of Columbia, each with its own laws. Consequently, there is not uniformity in whether, and how, a birth certificate can be modified for surgically treated transsexuals. More than half the states and the District of Columbia will issue a new birth certificate; about 20 will issue an amended certificate, and Idaho and Ohio still do neither.

Problems can arise when there is a need for a state to honor a birth certificate change from another state. California, although its legislature has authorized courts to change the certificate of a California-born resident, will not change one for a California resident born in another state (Bacalod v Superior Court, 2005). In Kansas, a post-operative male-to-female transsexual who had a birth certificate change in another state and thought she was a widow was declared male. To the court, the words '"sex," "male," and "female" in everyday understanding do not encompass transsexuals…A male-to-female post-operative transsexual does not fit the definition of a female…If the legislature wishes to change public policy, it is free to do so. We are not.' Consequently, she could not share in the estate of her husband who died without a will (Estate of Marshall Gardner, 2002). In Texas, a male-to-female transsexual who had married in Kentucky, sued doctors for malpractice, as surviving spouse, following the death of her husband. The court was not impressed: The transsexual's female anatomy was dismissed as "man made". Before recognizing otherwise, "…it is for the legislature, should it choose to do so, to determine what guidelines should govern the recognition of marriages involving transsexuals…the court has no authority to fashion a new law." As she was legally male, her claim was without merit (Littleton v Prange, 1999).

Family Law

The United Kingdom

The writer has been an expert witness in court cases where a transitioning parent has fought for continuing access to the children of a dissolving marriage. The non-transgender spouse argues that continuing contact would be psychologically damaging to the child, resulting in psychosexual confusion. Concern is also expressed over peer group stigma. The writer has published reports on 34 children of transsexuals. None expressed confusion or conflict over their gender identity. They were not subjected to continuing disruptive peer group reactions (Green, 1978, 1998). Nevertheless, some court decisions have gone against continuing transsexual parent-child contact (Green, 2006).

In one notorious case, a female-to-male transsexual lost a long battle to be declared parent and have continuing contact with children conceived by the mother during a 17 years' apparent marriage. He argued that he had been the psychological father. The mother argued that the marriage was void, being between two females. She also claimed fraud, stating she had not been aware of the transsexual's female status during the 17 years of their living as man and wife (Wife Discovers Husband of 17 Years is a Woman, 1996).

Less horrendous than denying psychological fatherhood and child contact, but still disappointing to the transsexual, was the refusal of the European Court to grant legal fatherhood to a female-to-male transsexual living as a family member with the children and their mother. He had argued that "family life" was not confined to families based on marriage and that other factors such as cohabitation length (they had been together 18 years) was relevant. The Court was concerned with promoting complex parenting changes in

donor insemination law (the manner in which these children were conceived) and pointed out that the transsexual was not prevented from acting as the children's father and could apply for a joint residence order which carries parental responsibility, though not parenthood (X, Y and Z v United Kingdom, 1997).

The United States

Decisions have been variable between states. In 1973 a Colorado court decided that a post-operative female-to-male transsexual who had married a female could retain custody of the children borne as a woman because the transsexualism had no demonstrable negative impact on them (Christian v Randall, 1973).

In 1974 a New York court noted the public policy of marriage for childbearing and concluded that a female-to-male transsexual was incapable. The marriage was voided. Wryly, the court observed, "Assuming, as urged, that (the transsexual) was a male entrapped in the body of a female, the record does not show that the entrapped male successfully escaped to enable defendant to perform male functions in a marriage" (Frances B. v Mark B., 1974, p. 717).

In 1976, in a New Jersey case challenging the validity of a marriage between a postoperative male-female transsexual and a man, the court upheld the marriage: "For marital purposes, (if) the anatomical and genital features….are made to conform to the person's gender, psyche, or psychological sex, then identity of sex must be governed by congruence of the standards…(The transsexual) should be considered a member of the female sex for marital purposes" (M.T. v J.T., 1976).

In 1986 a Nevada court terminated parental rights of a transitioning father. The court explained its rationale: "(the transsexual was)…a selfish person (who)…in a very real sense, has terminated (the) parental right as a father. It was strictly (the transsexual's) choice to discard…fatherhood…" (Daly v Daly, 1986).

Ohio ruled against a transsexual marriage in 1987 and affirmed its position in 2003. "It is the court's opinion that the legislature should change the statutes if it is to be the public policy of the state of Ohio to issue marriage licenses to post-operative transsexuals" (In re Ladrach, 1987; In re a Marriage License for Nash, 2003).

In a televised case in Florida, in 2003, the female partner of a female-to-male transsexual argued that a marriage was invalid because the putative husband was female. Consequently, the transsexual should have no parental rights. In an 800 page opinion, the trial court disagreed; "From a medical standpoint, (the transsexual) is of the male gender and has been his entire life…" He was declared father and awarded primary custody of the children (In the Marriage of Michael J. Kantaris v Linda Kantaris, 2003). However, on appeal, the marriage was declared void (In the Marriage of Michael J. Kantaris v Linda Kantaris, 2003): "The controlling issue in this case is whether, as a matter of law, the Florida Statutes governing marriage authorize a postoperative transsexual to marry in the reassigned sex. We conclude they do not.… Whether advances in medical science support a challenge in the meaning commonly attributed to the terms male and female as they are used in the Florida marriage statute is a question that raises issues of public policy that should be addressed by the legislature…Until the Florida legislature recognizes sex-reassignment procedures and amends the marriage statutes to clarify the marital rights of the postoperative transsexual person, we must adhere to the common meaning of the statutory terms and invalidate any marriage that is not between persons of the opposite sex determined by their biological sex at birth" (Kantaris v Kantaris, 2004).

Health Care

General Public: The United Kingdom

The United Kingdom has a National Health Service. This term is a misnomer. The Health Service is comprised of many regional entities, variously termed Health Authorities or Trusts. Whereas in the mid-1990s the great majority of Health Authorities were funding psychiatric, endocrine, and surgical treatment of transsexuals, the North West Lancashire Health Authority decided not to. "The Health Authority will not commission drug treatment or surgery that is intended to give patients the physical characteristics of the opposite gender." It argued that transsexualism was not a medical disorder and consequently ineligible for medical funding, and, in the alternative, if a disorder, the treatments provided were of no demonstrable benefit.

Three transsexual persons from that region, denied treatment, took the Health Authority to court. This writer submitted an affidavit that included, inter alia: "The consensus of world experts who understand and treat gender identity disorder today is that categorical refusal of treatment with the eventual possible option of sex reassignment is malpractice.…To assert that such treatment is ineffective ignores the body of published medical research…" The Health Authority had argued that the proposed treatment leaves the "alleged disease" untreated. The writer's affidavit continued: "Gender Identity Disorder may be the only psychiatric disorder curable by medical and surgical treatment. The dysphoric experience of gender identity disorder is the consequence of the person living in the sex role expected by birth sex. This dysphoria is eliminated by the reassignment procedure."

After abandoning the contention that transsexualism was not a medical disorder, the Health Authority asserted that it might consider treatment funding if the person were so

distressed by their gender identity disorder that they developed another psychiatric disorder such as major depression. It was pointed out to the Health Authority that a concurrent severe psychiatric disorder would probably disqualify the transsexual from receiving sex reassignment surgery. This "Catch 22" proposal was labelled "absurd" by the court.

The Court ruled in favour of the transsexuals (Regina v North West Lancashire Health Authority, 1998). Thus, a Health Authority could not categorically bar funding for a recognized, treatable, medical disorder. But, not prepared to cut its losses, the Health Authority appealed. It lost again.

General Public: The United States

The United States has no national health service. Whereas some Americans are insured through individual or group private plans, sometimes part of an employee benefits package, transsexualism is usually ineligible for coverage.

A case that progressed to a federal Court of Appeals was decided in favour of an employer and health insurer who refused coverage on the basis of a cramped interpretation of the insurance regulations. A medical expert was found who testified that sex change procedures were cosmetic. Consequently, they were not medically necessary and not covered (Mario v American Health, 2002). Even when an employer has a health plan that covers transsexual treatment, the insurance company may balk at paying. One insurer refused for 15 months but finally paid after arbitration and the employer intervened on the transsexual worker's behalf (Transsexual Wins Battle Over Surgery Payment, 2007).

Transsexuals, or persons with gender identity disorder, have a psychiatric medical illness, as defined in the *Diagnostic and Statistical Manual of Mental Disorders* and the *International Classification of Diseases*. As such, they could be considered eligible for coverage under the federal Americans With Disabilities Act (United States Code, 1991). However, that Act specifically excludes them. So there be no loopholes, the Act also excludes transvestism and gender identity disorders. However, at the state level, California, in 2000, expanded protections for people with disabilities to include transsexualism.

The Medicaid program is designed to assist medically indigent patients. It is administered by the individual states. Courts in a few states have reversed categorical refusal to fund sex reassignment procedures (J. D. v Lackner, 1978).

Military: The United States

With one Veterans Administration hospital exception, U.S. veterans cannot avail themselves of the governmental medical service to obtain hormonal or surgical treatment. Health care services that will not normally be covered include "gender alteration." The Boston VA Hospital has a written and approved protocol for transgendered veterans (P. D. Wright, personal communication, April 30, 2008).

Prisons: The United States

A series of court cases has engaged transgendered prisoners, usually with denial of treatment being challenged under the Constitutional protection (8th Amendment) against cruel and unusual punishment. The Federal Bureau of Prisons policy is to provide hormones on such level as previously received, if the prisoner can document prior prescriptions. Thus, transgendered persons self-prescribing from the Internet are disadvantaged. Transsexuals, denied sex steroids, have sought redress. Generally, some treatment and care is required so as not to constitute neglect and/or gross indifference which violates the Constitution.

A prisoner was permitted to bring suit in 1995 against a prison's refusal to administer sex hormones (Brown v Zavaras, 1995). Abruptly stopping hormone treatment was held to be an 8th Amendment violation (South v Gomez, 2000). However, another prison's refusal to provide hormones, held to be based on policy and not a medical judgment on the individual prisoner, was permissible (De'Lonta v Angelone, 2003).

A challenge was made to the Massachusetts state prison policy in 2002. That policy "froze" a transsexual prisoner in the pre-incarceration state of treatment. Therefore, no movement could be made on the Real Life Experience. The court thawed the freeze and permitted progress (Kosilek v Maloney, 2002). That prisoner, convicted of murdering his wife, continues to litigate with the goal of sex-reassignment surgery.

Prisons: The United Kingdom

Transgendered prisoners have received endocrine and surgical treatment, often requiring legal assistance. Prisoners who have commenced cross-gender living, including cross-sex hormone treatment prescribed by a physician before incarceration, are more likely to be able to continue endocrine treatment. The extent to which they can cross-dress varies between prisons and the extent of their level of restriction. Prison officials express concern for the prisoner's safety as the reason for denying cross-dressing outside of the individual's cell. Whether a prisoner can fulfil a Real Life Experience while incarcerated is debatable. A prisoner typically remains in the section limited to persons of their birth sex unless they have undergone sex reassignment surgery.

In 1999 a man convicted of kidnapping and another of armed robbery underwent sex-change surgery (Electronic Telegraph, 2000; Independent on Sunday, 2000). In 2000, the Chief Inspector of Prisons declared that inmates should be allowed free sex-change operations (Independent on Sunday, 2000).

Conclusion

Protection of human rights for the transgendered has lagged behind the medical innovation that began 40 years ago. A significant beginning was 20 years ago when representatives of European nations formally recognized the needs of transgendered persons. The European Parliament and Parliamentary Assembly of the Council of Europe called for comprehensive recognition of transsexual identity. It declared that "human dignity and personal rights must include the right to live according to one's sexual identity." Member states were called on to enact provisions for a transsexual's right to change sex by endocrinological, plastic surgery, and cosmetic treatment. Workplace discrimination was to be banned. Member states were asked to ensure that the cost of medical treatment would be reimbursed by the health insurance institutions. Legislation was urged to allow change of sex on birth registers after sex reassignment (Resolution OJ, 1989).

Western European nations progressed slowly in enabling these persons to live as unencumbered by gender and sexual expression as the rest of the population. Human rights laws promoted by the European Convention were instrumental. By contrast, the absence of an overriding principle in United States law hindered progress for American transgendered persons. Whereas in Europe there is pressure on the minority of states that do not conform in granting rights, as was the case with the United Kingdom and birth certificate change, in the United States considerable latitude is permissible between states. Further, in Europe, specific rights are delineated, including the right to privacy and the right to family life. The American constitution is specifically silent here, requiring a cobbling together of "penumbras" emanating from various rights to declare a new one, as with the right of married couples to use contraception (Griswold v Connecticut, 1965).

Missing from the above survey are considerations in the remainder of the world where most transgendered persons live. Governments and non-governmental organizations must engage those persons who are hoping to negotiate these most fundamental elements of personhood.

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